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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Attorney for SolarCity Corporation

BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

SANDRA D. KENNEDY
COMMISSIONER

PAUL NEWMAN
COMMISSIONER

GARY PIERCE
COMMISSIONER

BOB STUMP
COMMISSIONER

**IN THE MATTER OF THE
APPLICATION OF ARIZONA
PUBLIC SERVICE COMPANY FOR
APPROVAL OF ITS 2011
RENEWABLE ENERGY STANDARD
IMPLEMENTATION PLAN AND
DISTRIBUTED ENERGY
ADMINISTRATIVE PLAN AND
REQUEST FOR RENEWABLE
ENERGY ADJUSTOR.**

DOCKET NO. E-01345A-10-0262

E-01345A-10-0166

**SOLARCITY'S COMMENTS ON THE APS
2011 IMPLEMENTATION PLAN**

SolarCity Corporation hereby submits its comments to the APS 2011 Implementation Plan.

RESPECTFULLY SUBMITTED this 3rd day of November, 2010.

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Arizona Corporation Commission

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1 Original plus 13 copies of the foregoing
2 filed this 7th day of November 2010, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, Arizona 85007

7 *I hereby certify that I have this day served the foregoing documents on all parties of record in
8 this proceeding by sending a copy via electronic mail to:*

9 Lyn Farmer
10 Chief Administrative Law Judge
11 Arizona Corporation Commission
12 1200 W. Washington Street
13 Phoenix, Arizona 85007
14 *lfarmer@azcc.gov*

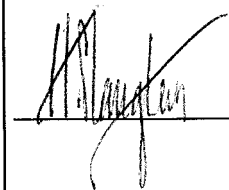
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November 3, 2010

VIA HAND DELIVERY

Kristen K. Mayes, Chairman
Commissioner Gary Pierce
Commissioner Paul Newman
Commissioner Sandra D. Kennedy
Commissioner Bob Stump
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: *In the matter of the application of Arizona Public Service Company for approval of its 2011 Renewable Energy Standard Implementation Plan; Docket No. E-01 345A- 10-0262;*

Dear Chairman Mayes and Commissioners;

SolarCity Corporation appreciates the opportunity to comment on the above-referenced docket regarding the 2011 RES Implementation Plan filed by APS. Thanks to the hard work and foresight of the Commission, Arizona continues to be one of SolarCity's most important markets. We are dedicated not only to the growth of our business in the State but also to the long-term growth and development of the solar industry as a whole. As Arizona's largest utility, the manner in which APS implements the Renewable Energy Standard is key to the success of the program and the health of the industry. Thus, an open exchange of ideas and constructive dialogue between all stakeholders is absolutely vital to ensure that we are doing our very best for the future of solar and the people of Arizona.

SolarCity commends the efforts to date of both APS and the Commission as we all attempt to deal with the challenges and successes of unprecedented growth in our industry. The incredible acceleration of consumer demand and number of market participants has yielded both opportunities and difficulties. The most important task at hand is to work toward sustainable growth via stable, functional, and equitable program implementation. This will ensure that Arizona continues to have a robust and competitive solar market that fosters increasing demand, decreasing costs, and market-based innovation. In pursuit of these goals, SolarCity offers the following comments and suggestions regarding APS's 2011 plan.

Residential Program

The growing pains faced by the industry are most notable in the residential sector. APS's residential incentive program went from being undersubscribed in 2009 to being nearly

exhausted by the first quarter of 2010. In response to this, APS, the industry and the Commission sought to reduce incentive levels and reform the reservation process in an attempt to spread the available funds over a greater number of participants and to avoid a complete halt of sales and installations.

In Decision No. 71913 (See Docket No. E-01345A-09-0338), the Commission authorized APS to utilize 2011 funding to fulfill up to 600 additional reservations in the last funding cycle of 2010 at a level of \$1.75/watt. The Commission also approved APS's proposed tranche step-down method such that 2011 reservations will likely begin at an incentive level of \$1.60/watt. In short, in one year, residential incentive funding levels have declined from \$3.00/watt to \$1.60/watt, a drop of nearly 50%. SolarCity is concerned that this rapid drop in incentive levels has the potential to artificially distort the market. Because the market has had to bear such steep reductions so quickly, further rebate drops might lead to a downturn in the solar market as installations are halted or decreased and companies lay off workers. We believe this would be detrimental to the market as a whole since one of the goals of a solar rebate program is to allow the industry to scale up and continuously work to decrease the installed costs of solar. A contraction in the industry would have the opposite effect, however, and we would counsel APS and the ACC to consider that before instituting further rebate reductions.

SolarCity appreciates the need for and wisdom of stepping down funding levels over time. However, there is simply no way at this moment to accurately assess the continued level of participation in the program at \$1.75/watt. Since APS's filing requesting clarification of Cycle 3 2010 funding and a reduction to \$1.75, it is worth noting that weekly reservation levels have slowed, likely indicating that the reductions to date have had the desired effect of slowing demand. Without a chance to evaluate these effects, an automatic reduction to \$1.60 for 2011 applications may be too much too soon. Thus we would suggest that funding Cycle 3 of 2011 remain at \$1.75/watt with automatic \$.10/watt reductions beginning in Funding Cycle 4 of 2011.

In addition, APS is proposing a Rapid Request program where incentive requests at \$1.00/watt for the first 2 weeks of every funding cycle are funded immediately. SolarCity recognizes the potential value of such a program but strongly believes that any reduction greater than \$0.20/watt below the prevailing funding level during the cycle concerned would simply result in an unhealthy, distorted market. One can certainly envision a scenario where a company, willing and able to take a short term loss, reserves a significant portion of 2011 funds via this program, thus sparking others to accept \$1 out of fear the year's funds would be exhausted; any level of rebate, after all, is better than no rebate. However, significant participation in this Rapid Request program would not necessarily translate to a healthy, competitive, growing market. Rather, it provides companies with a significant potential to game the system, thereby initiating a war of attrition. Such a Pyrrhic victory in reducing rebate levels should be avoided at all costs. As such, SolarCity would request that this program, if instituted, be set at a more reasonable \$1.55 per watt, with an anticipated reduction to \$1.45/watt in Funding cycle 4

Commercial Program

SolarCity is generally supportive of APS's 2011 plan for commercial programs. However, one issue that warrants discussion is the company's bi-annual funding cycles for large commercial projects. With only two cycles per year, SolarCity is concerned that sales activity in this sector is inhibited for much of the year as it may be up to 5 months between selling a system and getting a reservation approval. This sporadic process makes it difficult and risky to invest time and money pursuing opportunities in this sector. This is particularly the case if, as APS has requested, the project size cap of 2 MW is adopted. The rationale for having only 2 reservation periods makes much more sense if very large projects are part of the mix. However, if a 2 MW cap is instituted, we feel the large commercial market would be better served with 3 or 4 reservation periods.

We also believe that the Commercial PBI program should be revised in such a way that only licensed contractors or qualified installers can bid into the program. To date, very few of the projects that have gotten funding reservations through this program have been built. We are worried that this is because speculators who don't have an installer lined up are participating in the RFP process, bidding too low, and then trying to find a qualified installer to install their system after the fact. Because many of the bids are so low, it not only distorts the market but it also results in very few projects actually getting built since speculators have a hard time finding an installer who can take the work at the price they are offering. We would therefore recommend that the RFP rules be revised to allow only licensed contractors to bid on commercial jobs.

Schools and Govt. Program

APS originally filed for approval of this program in a separate docket but asked, and was granted permission, to consolidate it into their 2011 plan filing. While SolarCity was not opposed to this consolidation, we wish to ensure that the origin and nature of the initial program and filing is not lost in the transition.

The original proposal originated from APS's requirements under their rate case settlement. It was SolarCity's understanding that this requirement was intended to be additive to, and separate from, APS's requirements under the RES. However, with the consolidation of the two dockets, it is unclear whether APS's proposed program is, in fact, a response to their settlement agreement requirements (and therefore additive to annual RES funding) or if they are proposing that this program be folded into the 2011 RES plan (thereby functionally decreasing 2011 RES funding that would otherwise be available). Clarification on this matter is necessary to fully evaluate the merits of the proposal. If it was the intent of the Commission that APS's obligations under the rate case settlement were to be separate from (and therefore in addition to) the RES funding then that intent should not be lost via consolidation of the dockets.

Additionally, as part of the original program proposal (pursuant to the rate case settlement), APS suggested that it may be appropriate to allow the company to own up to 50% of the assets installed via this program. While consideration of this request *may* have been appropriate if the program was additive to the RES, it is wholly inappropriate if the program is

simply a part of the 2011 RES funding. The distributed generation portion of the RES was never intended to provide for utility ownership. Regardless of how the company may account for the RECs under this proposal (i.e. not counting towards the DG carve out) the practical effect of approving this request would be to reduce 2011 RES funding that would otherwise be available.

Perhaps most importantly, utility ownership of school projects is going to result in poor economic outcomes for the ratepayer schools. Right now, solar providers, including SolarCity, are battling with one other to reduce prices in order to win Requests for Proposals ("RFP") from school districts around the State. With each RFP, prices are falling and the rate charged for solar services is declining. Exhibit D to the proposed Distributed Energy Administration Plan (the "DEAP") provides that APS will be selling electricity to schools through its proposed "School and Government Program" for a fixed, pre-determined, rate of \$0.09293 per kW/h. RFPs throughout the State have been won by solar providers who are committing to sell their services for prices less than \$0.09 per kW/h and even as low as or lower than \$0.07 per kW/h.

The problem here should be obvious, since any school that chooses to purchase solar energy from APS at \$0.09293 per kW/h is almost certainly going to be paying more for their solar installation than they otherwise would have been if they went through the RFP process. Also, it does not make sense for solar installers to compete with a monopoly energy provider who can rate base the costs of installations. And it is not hard to imagine a situation where a school foregoes an RFP to do a direct deal with APS because their name is trusted and familiar as the school's electricity provider despite the comparatively poorer economics. Another unfortunate outcome results as well: schools making deals directly with APS, after declining to participate in the RFP process, then curtail the competitive bidding process that drives prices lower. The ultimate effect of reducing competition would be to drive up solar installation costs for schools.

In addition, if APS decided to go through an RFP process, it is unclear how APS would participate in sealed, competitive bidding when its pricing is already known to all participants as a result of its approved tariff. If APS' parent entity Pinnacle West is interested in owning distributed solar property, it apparently already can do this through its APS Energy Services ("APSES") entity. If APS itself were allowed to also own solar properties on schools, it could result in APSES bidding against APS along with other solar providers for the same projects, thereby giving APS and Pinnacle West two opportunities for winning every potential project. Ultimately, if APS wants to be an active market participant then it should be required to play by the same rules that adhere to all of the other free market participants against whom it hopes to compete. Handicapping the rules to allow APS to secure an unfair market advantage distorts free market dynamics and is contrary to the interest of ratepayers.

For the forgoing reasons SolarCity requests that no utility ownership be allowed under this program.

Lastly, if this proposed program is simply a part of (and not additive to the RES) then some of the details certainly warrant further discussion. For example, the size limits proposed by APS on systems for schools seem somewhat arbitrary; why should they be subject to different restrictions than a commercial installation (2 MW and 125% of load)?

Distributed Energy Administration Plan

One of the biggest problems facing the residential solar industry today is that customers of solar companies are waiting 200 days or more from the time they apply for their rebate to the time it is finally granted. SolarCity believes these long wait times undercut the credibility of the solar incentive program and the solar industry. These long wait times can turn an eager and excited solar customer into a deflated and angry solar customer 200 days later.

SolarCity is prepared to address this problem by installing solar facilities at the time the application for the rebate reservation is made. This means that customers who are excited about solar when they contact SolarCity will be getting their systems installed quickly without being forced to wait for months for a rebate application to be confirmed. SolarCity is prepared to assume the risk that the rebate will be granted at a lesser amount, not be granted for several months or years, and even assume the risk that a rebate may never be granted. Unfortunately, there is a proposal within the text of APS's proposed 2011 Distributed Energy Implementation Plan (the "DEAP") to eliminate this option. The proposed change will have a profound impact on the ability of the distributed market to grow and respond to market forces and it will mean that customers will be forced to wait hundreds of days and become increasingly disenchanted with the process of getting their solar installation.

The current DEAP rightly says that rebates can only be issued for new systems. After all, the RES is supposed to drive new solar installations, not provide funding for solar systems that may have pre-existed its creation. The current version of the APS DEAP states that, "a DE system purchased more than 180 days before the date that APS receives the reservation request will not be considered 'new' under this plan." (2010 DEAP at p. 6) The plain meaning of this section is that in order to secure a rebate, an application to the utility must be brought within 180 days of the purchase of the system. This allows systems that are in service for more than 180 days to receive rebates as long as the application for the rebate is submitted (as opposed to being granted) close to the time the system is installed.

The updated 2011 DEAP includes very few alterations. However, it does propose changing the key sentence referenced above. The new sentence would read, "a DE system purchased and installed more than 180 days before the date that *APS approves* the reservation request will not be considered 'new' under this Plan." (2011 DEAP at p. 6) (emphasis added). This departure from the current language would deny a rebate to any system that is installed more than 180 days prior to the rebate being granted. This would require all solar customers to wait hundreds of days from the time they decide to go solar to the time they actually get their system installed. There is no justification for this change as it will harm potential solar consumers by increasing the amount of time it takes to get systems installed.

SolarCity proposes amending the above referenced section of the DEAP to preserve its rights under today's plan to install systems at risk without any guarantee that a rebate will be received at a certain level. While SolarCity is fine with the current language, we believe that some

additional language could be added to help make sure that consumers understand the situation. SolarCity proposes that the Commission include in its Order a paragraph indicating that:

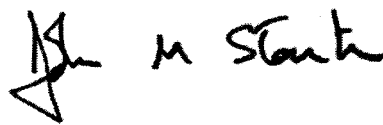
The Commission declines to approve APS' proposed alteration of the DEAP to take away the current right of customers to install their systems in advance of receiving their rebate reservation and instead wishes to clarify that the DEAP allows systems to be installed and qualify for the rebate payment so long as the customer makes an application for the rebate within 180 days of installing the system. To further protect the customer we hereby Order that the following language be inserted in the approved DEAP:

In order to qualify for a rebate, all major components of the DE system must be new and must not have been previously placed in service in any other location or for any other application. A DE system purchased (or leased) and installed more than 180 days before the date that APS receives the reservation request will not be considered "new" under this Plan. APS may consider exceptions to this timeframe when justified by the Participant in writing. The rebate application will include a notice to the public and a disclaimer, prominently displayed and in bold writing, providing notice to any customer who wishes to install a system before the corresponding rebate reservation request is approved that the amount of the rebate is subject to change based on utility and Commission action and that the customer is not guaranteed a rebate amount or a timeframe for the payment of such rebate and is not guaranteed that a rebate even will be available. The application will include a specific field for a required signature (an electronic signature will suffice for on line applications) from the customer indicating that they have read and understand this notice and disclaimer and that they legally waive the right to bring any claims against the utility if the rebate is lower than they expected, takes longer than anticipated, or is not approved. The DE system must also comply with the technology specific criteria detailed below. When technology-specific criteria reference third party standards, the requirements of those standards are fully applicable when referenced as part of technology specific criteria.

Conclusions

SolarCity is cognizant of the difficult task facing the Commission and the challenges that APS has faced in trying to refine their 2011 RES implementation plan. We appreciate the opportunity to provide comments and hope that you find them constructive and that they facilitate healthy and productive debate. Our intent and goal as always is to advocate for a strong and stable solar market that will continue to provide benefits to Arizona residents for many years to come. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Stanton". The signature is stylized, with a large, looped initial "J" and a clear, legible name.

John Stanton
Vice President, Government Affairs

cc: Docket Control (*13 copies*)
Steven M. Olea
Janice M. Alward